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Pequignot + Myers LLC 90 North Coast Highway 101 Suite 208 Encinitas, CA 92024				
EXAMINER				
LEE, BRYAN Y				
ART UNIT		PAPER NUMBER		
2445				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@PMIPLAW.COM
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Office Action Summary

Application No.

10/718,546

Applicant(s)

MONK ET AL.

Examiner

BRYAN LEE

Art Unit

2445

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Remarks/Arguments

1. This communication is considered fully responsive to the Amendment filed on 01 November 2010.
2. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that the cited prior art does not teach each and every limitation as disclosed by amended claims 1, 18 and 19. Specifically, Applicant argues that the "aggregation is compilation of all of the various different kinds of tests, e.g. jitter, packet loss, utilization, to provide a comprehensive overall status level" (See remarks p. 8). However, this limitation is not found in the claims as presented. The amended claims include similar but simpler language: a plurality of different tests. This limitation does not indicate the manner in which the tests differ. It may be reasonably interpreted as a single test performed in a series of different times or a series all together different tests. Therefore, the limitation as amended does not distinguish the present invention from the prior art of record.

Secondly, the Applicant argues that an *indication of overall status based on a plurality of different tests at a plurality of different times* is also not taught by the cited prior art of record (See Remarks p. 9). The Applicant argues that both the overall status indicator is not taught, and that the indicator if present could not disclose overall status over a period of time. Again, the claims as presently amended do not disclose an *overall status* nor is does it explicitly disclose that the aggregation is a "trend in the status over time" as argued by Applicant (See

Remarks p. 8). While the claims state “providing a visual indication” and providing the indication “at a plurality of different times”, this limitation can be reasonably construed to mean the indication is provided at a plurality of different times – but does not explicitly state a visual history or aggregation of the status over time.

In response to applicant’s argument that the invention *enables a technician to easily identify when, where, and why the changes in status took place* (See Remarks p. 9). A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. How the technician may make use of a device is largely irrelevant.

Please see below for a detailed rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim(s) 1-12 and 14-16, 18 and 19** is/are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pre-Grant Publication 2005/0081157 A1 to *Clark et al.*

("Clark") in view of U.S. Pre-Grant Publication 2001/0023455 A1 to *Maeda et al.* ("*Maeda*").

As to **claim 1**, *Clark* disclose(s) an internet protocol network testing apparatus, comprising:

Clark do(es) not expressly disclose a plurality of network analysis devices, each network analysis device operable to conduct a plurality of different tests on a different segment between nodes of a distributed internet protocol network;

Maeda disclose(s) a plurality of traffic measuring units that monitors traffic on different network segments. (*Maeda*; See Fig. 3 [0042])

Clark and *Maeda* are analogous art because they are from the same field of endeavor with respect to distributed monitoring of network components.

At the time of invention, it would have been obvious to a person of ordinary skill in the art to combine the network analysis devices of *Maeda* with the apparatus of *Clark*. The suggestion/motivation would have been to monitor network traffic in a similar manner as the network entities of *Clark*. (*Clark*; [0034] viewing performance aspects of network entities). The concept of displaying measurements is not a problem unique to "network segment" measurements. Network segment measurements such as jitter, packet delay and packet loss are simply types of measurements that might need to be aggregated and displayed at a display terminal. Using the display of *Clark* to display performance measurements would be similar to displaying the network measurements of *Clark*.

Clark further disclose(s) a graphical user interface (*Clark*; Fig. 4a) providing a link to network related measurements (*Clark*; [0034] viewing performance aspects of network entities) by network analysis devices (*Clark*; Fig. 4a; 90c, 90d, 90e, 90f; devices on the network that are analyzed), to present a test (*Clark*; Fig. 4a; 90a; a graph of the performance of devices, which shows the overall and individual performance of the devices combined into a single view) including

a visual aggregation of measurement results from the plurality of different test from two or more of the plurality of network analysis devices providing a visual indication of one of a plurality of threshold status indicators of each segment at a plurality of different times; (*Clark*; discloses aggregating measurements; See [0039])

perceptibly correlated network-related measurements by two or more of the plurality of network analysis devices through a selectable graphical display of the network analysis devices enabling identification of which of the tests caused changes in the threshold status indicator, and (*Clark*; aggregated measurement also teach "perceptibly correlated" measurements – measurements may be correlated in any number of ways; See [0039])

a selectable graphical display of at least one network-related measurement for each selected network analysis device. (*Clark*; Fig. 4a; 54; graphical tree of selectable devices)

wherein, in response to user selection of the two or more of the network analysis devices, and in response to user selection of the at least one network-related measurement, from the selectable graphical displays, the graphical user interface causes the two or more of the network analysis devices and the at least one network related measurement to be added to the test; and

wherein the perceptibly correlated network-related measurements are visual correlations as a top-level test view of the test and selectable to navigate to lower test levels of detailed network related measurement views of each network analysis device. (*Clark*; Fig. 4a, 90i, each measurement may be selected from a group of aggregated measurements; See [0039] where individual member information may be selected from the aggregated output of a group of members)

Clark disclose(s) a user selecting an entity wide view which displays performance and status metrics for the aggregate set of members. ([0048]-[0049]) The entity is a cluster of computers. Each member has performance and status metrics which can be combined into a display. The members of the cluster teach network analysis devices and the performance and status metrics teach network related measurements. The aggregate teaches the test.

In response to selecting an entity wide view an aggregate view is displayed. ([0048]-[0049]) The selection of devices and measurements is incorporated in the selection of the entity wide view. Examiner gives the term "user selection" limited patentable weight since it has not been incorporated into an actual step. Examiner construes a "user selection" having been made so long

as at some point a selection or selections have been made by the user for which an appropriate response is displayed.

As to **claim 2**, *Clark* disclose(s) an apparatus, wherein the network analysis devices are heterogeneous, (*Clark*; [0035] "may manage both homogeneous and non-homogeneous entities") and the graphical user interface presents as the perceptible correlation correlated graphs of network-related measurements from the heterogeneous devices as a heterogeneous test, thereby allowing a new measurement of two or more adjacent network segments including the heterogeneous devices. (*Clark*; Fig. 4a; 90a; a graph of the performance of devices, which shows the overall and individual performance of the devices combined into a single view)

Given a broad but reasonable interpretation, adjacent network segments could be those network segments connected by a relay, bridge, router, switch, or other connective means. In *Maeda*, segments are connects for example by packet relays. Therefore, the network segments of *Maeda* teach adjacent segments. (*Maeda*; See Fig. 3)

As to **claim 3**, *Clark* disclose(s) an apparatus, wherein the graphical user interface displays a vertically oriented window, and displays in the window a hierarchical icon control tree of selectable parent-child icons corresponding, respectively, to the test and the network analysis device for the test. (*Clark*; Fig. 4a; 54; graphical tree of selectable devices)

As to **claim 4**, *Clark* disclose(s) an apparatus, wherein child icons of the test parent icon correspond to a test results summary, to a test configuration, and to the test network analysis devices that each include child icons corresponding to results of the at least one measurement from each network analysis device and to a configuration of each network analysis device. (*Clark*; Fig. 7b; 54; graphical tree of selectable devices has child icons 126a, 126b, 126c -- each corresponding to viewable measurements)

As to **claim 5**, *Clark* disclose(s) an apparatus, wherein a selectable parent icon of the tree corresponds to real-time measurement collections from the network analysis devices to be added into the test. (*Clark*; [0012]; the system monitors: CPU utilization, memory utilization, server requests/second; these are all real-time measurements)

As to **claim 6**, *Clark* disclose(s) an apparatus, wherein a selectable parent icon of the tree corresponds to the network analysis devices to launch a graphical user interface to manage the network analysis devices for the test. (*Clark*; 4b; 90c; is a parent icon that corresponds to a devices to be analyzed in the graph 94a; a browser is launched for a particular resource when the resource is selected [0056])

As to **claim 7**, *Clark* disclose(s) an apparatus, wherein the at least one network-related measurement for each selected network analysis device is an existing collection of network-related measurements. (*Clark*; [0012]; the system

monitors a collection of the following: CPU utilization, memory utilization, server requests/second.)

As to **claim 8**, *Clark* disclose(s) an apparatus, wherein the selectable graphical display of the network analysis devices comprises graphical tab dialogues of analysis device selection, analysis device configuration, analysis device measurement selection, and analysis device measurement configuration, allowing selection and configuration of analysis devices added into the test. (*Clark*; tabbed inputs 130b and 130c provide a user with more options; [0063])

As to **claim 9**, *Clark* disclose(s) an apparatus, wherein the measurement results are visually correlated according to parameters selected from a time line, a threshold, and a trend. ([0061] threshold, Fig. 4a; 90a; See graph timeline and trend – graphs are visual representations of conditions over time and are used for analyzing trends, i.e. time of day with highest load can be spotted)

As to **claim 10**, *Clark* disclose(s) an apparatus, wherein the selectable graphical display of the network analysis devices comprises a list of available network analysis devices, (*Clark*; Fig. 4a; 54; graphical tree of selectable devices) a list of network analysis devices added into the test, (*Clark*; Fig. 4a; 90g; list of devices) and selection and removal graphical display buttons to add and remove (*Clark*; Fig. 4a; 90j, 90k; add remove buttons) an available network analysis device to/from the list of added network analysis devices.

As to **claim 11**, *Clark* disclose(s) an apparatus, wherein the selectable graphical display of the at least one network-related measurement comprises a

list of available network-related measurements for each network analysis device in the list of added network analysis devices. (*Clark*; Fig. 7b; 54; graphical tree of selectable devices has child icons 126a, 126b, 126c -- each corresponding to viewable measurements)

As to **claim 12**, *Clark* disclose(s) an apparatus, wherein the selectable graphical display of the at least one network-related measurement comprises selectable graphical displays of measurement configurations for each network analysis device measurement. (*Clark*; Fig. 7b; 54; graphical tree of selectable devices has child icons 126a, 126b, 126c -- each corresponding to viewable measurements)

As to **claim 14**, *Clark* disclose(s) an apparatus, wherein a selectable parent icon of the tree corresponds to a test manager managing a plurality of tests and including a plurality of child test icons. (*Clark*; Fig. 7b; 54; graphical tree of selectable devices has child icons 126a, 126b, 126c -- each corresponding to viewable measurements)

As to **claim 15**, *Clark* disclose(s) an apparatus, wherein for the visual aggregation of measurement results, (*Clark*; Fig. 4a; 90a; a graph of the performance of devices, which shows the overall and individual performance of the devices combined into a single view) the graphical user interface presents a plurality of tests according to a time line as visually aggregated test results for each test and each aggregated test result (*Clark*; [0029] aggregated information) is selectable (*Clark*; Fig. 4a, 90i, each measurement may be selected) in each

time line time period to navigate to each test as the visually correlated network-related measurements at each time period in the time line.

As to **claim 16**, *Clark* disclose(s) an apparatus, wherein the graphical user interface comprises:

a test manager managing creation, update and deletion of the test, an agent manager managing creation, selection, and removal of the network analysis devices in the test; (*Clark*; Fig. 4a; [0054] create a new application, and delete a selected application)

an agent network interface configuration manager managing selection and configuration of network interfaces a network analysis device added in the test; and (*Clark*; [0026] includes a entity configuration interface; See also [0035])

an agent measurement configuration manager managing selection, configuration, and removal of a network-related measurement on a selected network interface for the network analysis device added in the test. (*Clark*; Fig. 4a; 90j, 90k; add remove buttons used to add and remove measurements)

As to **claim 18**, *Clark and Maeda* disclose(s) a computer in network communication with a plurality of computer agents providing network related measurements of different segments of the network, the computer comprising:

a programmed computer processor providing a graphical user interface, the graphical user interface providing a link to the network related measurements provided by the computer agents, to present a plurality of tests as a including:

(Clark; Fig. 4a; 90a; a graph of the performance of devices, which shows the overall and individual performance of the devices combined into a single view)

a visual aggregation of measurement results from the plurality of different test from two or more of the plurality of network analysis devices in adjacent segments providing a visual indication of one of a plurality of threshold status indicators of each segment at a plurality of different times; (Clark; discloses aggregating measurements; See [0039])

perceptibly correlated network related measurements from the plurality of tests by two or more of the computer agents through a selectable graphical display of the computer agents enabling identification of which of the tests caused changes in the threshold status indicator, and (Clark; aggregated measurement also teach "perceptibly correlated" measurements – measurements may be correlated in any number of ways; See [0039])

a selectable graphical display of a least one network related measurement for each selected computer agent; (Clark; Fig. 4a; 54; graphical tree of selectable devices)

wherein, in response to user selection of the two or more of the computer agents, and in response to user selection of the at least one network related measurement, from the selectable graphical displays, the graphical user interface causes the two or more of the computer agents and the at least one network related measurement to be added to the test; and

wherein the perceptibly correlated network-related measurements are visual correlations as a top-level test view of the test and selectable to navigate to lower test levels of detailed network related measurement views of each network analysis device. (*Clark*; Fig. 4a, 90i, each measurement may be selected from a group of aggregated measurements; See [0039] where individual member information may be selected from the aggregated output of a group of members)

See similar rejection and motivation to claim 1.

As to **claim 19**, *Clark and Maeda* disclose(s) a method, comprising:
presenting a selectable graphical display of known heterogeneous network analysis devices, each analysis device on a different segment between nodes (*Maeda*; See Fig. 3 [0042]) of a network; (*Clark*; Fig. 4a; 54; graphical tree of selectable devices)

See similar motivation to claim 1.

Clark and Maeda further disclose selecting a plurality of the analysis devices; (*Clark*; selecting a group of aggregated test information; See [0039])
presenting a selectable graphical display of known network-related tests corresponding to each selected network analysis device; (*Clark*; Fig. 7b; 54; graphical tree of selectable devices has child icons 126a, 126b, 126c -- each corresponding to viewable measurements)

selecting a plurality of the network-related tests; (*Clark*; Fig. 4a; 54; graphical tree of selectable devices)

presenting a graphical user interface by displaying:

a visual aggregation of the selected network-related tests results from each of the selected network analysis devices providing a visual indication of one of a plurality of threshold status indicators of each segment at a plurality of different times; (*Clark*; discloses aggregating measurements; See [0039])

a visual correlation of the selected network-related measurements from the selected heterogeneous network analysis devices enabling identification of which of the tests caused changes in the threshold status indicator; and (*Clark*; Fig. 4a; 90a; a graph of the performance of devices, which shows the overall and individual performance of the devices combined into a single view)

a visual representation of the selected network-related measurement from one of the network analysis devices. (*Clark*; Fig. 4a, 90i, each measurement may be selected from a group of aggregated measurements; See [0039] where individual member information may be selected from the aggregated output of a group of members)

See similar motivation and rejection to claim 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRYAN LEE whose telephone number is (571)270-5606. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. L./
Examiner, Art Unit 2445

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2445

